CHOICES IN HOMEOWNERSHIP (“CHOICE”) PROGRAM 2014 GUIDELINES

Program Overview	The Agency’s Choices In Homeownership Program (“CHOICE”) following in the tradition of its predecessors UHORP and MONI, provides a subsidy that will be a catalyst for the creation of viable homeownership markets in municipalities where home values currently do not support a sustainable new construction housing market. CHOICE is a comprehensive financing program for the development of newly constructed and gut rehabilitated homeownership (owner-occupied primary residences) housing in New Jersey. The program features below-market interest rate construction loans and construction subsidy funding for developers as well as favorable end loan financing for eligible homebuyers, subject to funding availability. Prior to accepting applications, the developer is required to meet with Agency Staff to go over submission packages. This will take the place of the training that was required in the past. This does not guarantee approval of the project.
CHOICE Construction Loan Types	**Agency only funding** – the Agency will fund 100% of the construction loan without a participating lenders involvement. **Shared construction funding** - The Agency and a participating lender will have equal shares of the construction loan along with a pari passu first lien position. Once Staff reviews an application and considers the request of the developer, the type of construction loan will be determined.
Forms of CHOICE Financing	The Agency will determine which one of the following forms of financing it will use for each individual project. 1. The Agency provides **Agency only or shared construction funding** and subsidy during construction. 2. The Agency provides **Agency only or shared construction funding** without subsidy. 3. The Agency provides **Agency only or shared construction funding** that will be first in, with subsidy available after expenditure of the construction loan. 4. The Agency provides **Agency only or shared construction funding** and subsidy at completion. Once Staff reviews an application the form of financing will be determined.
Participating Lender Involvement and the Intercreditor Agreement	For some CHOICE projects, the Agency will provide 50% of the approved construction loan required to complete the project with the balance of the loan provided by the applicant’s chosen private construction lender (herein after "Participating Lender"). The Participating Lender must be approved by the Agency and be able to sign the Intercreditor Agreement. The Participating Lender must be independent of the developer. Applicants should be aware that it is their sole responsibility to obtain a lending commitment from a Participating Lender and that the Agency makes no representation that any lender, be it a Agency approved Participating Lender or otherwise, will make a commitment to the applicant or sign the Intercreditor Agreement. The Participating Lender must submit their commitment for financing, within 120 days of the Agency’s commitment. In the event that the Agency does not receive the commitment from the Participating Lender, the application will be considered inactive and returned to the Developer. The Agency and Participating Lender will make progress inspections, approve draw requests in conjunction with Agency staff, handle construction period servicing and disburse the CHOICE construction loan and subsidy funds (except for the required subsidy retainage, which will be disbursed by the Agency directly to the developer). CHOICE applicants should be aware that the terms and conditions, set forth in the Intercreditor Agreement are applicable to CHOICE projects in conjunction with these program guidelines. In addition, Participating Lenders may impose requirements regarding recourse and guaranties, and many other terms

	and conditions, that may not be expressed in the Agency's documents, but which will inure to the benefit of the Agency either under the Intercreditor Agreement or the terms of the Participating Lender's construction loan agreement.
Types of Financing Available	**CHOICE Construction Loan:** The maximum construction loan shall not exceed 90% of the appraised value of the completed project. In Shared construction funding, the Agency and the Participating Lender will contribute an equal percentage of the final construction loan amount approved for the project. The construction loan will be administered as one loan and the Agency and the Participating Lender's participation are secured by separate pari passu first mortgages and notes of equal lienhold status. With Agency only funding, the Agency will fund 100% of the construction loan without a participating Lenders involvement. At time of closing, the Agency will set an interest rate on its portion of the loan that is equal to the interest rate offered by the Participating Lender on its portion of the loan. In cases where the Agency is funding 100% of the construction loan, the interest rate shall be Prime plus 1%. The construction loans shall be co-terminus and shall not exceed 24 months from the date a construction loan agreement is executed by the borrower and Participating Lender. The Agency and Participating Lender may recommend a six-month extension beyond the original term of the construction loan to the Agency; such recommendation is subject to the approval of the Executive Director and the Agency's ¼ point extension fee. **CHOICE Subsidy Funding:** The Agency may provide up to $50,000 per unit in CHOICE subsidy funds, which can be used for the development of Emerging Market units included in the project. Affordable units are not eligible for subsidy. Each project's subsidy amount shall be provided as a second lien secured by a mortgage, with the mortgage lien partially discharged as each completed unit is sold. Any intervening liens or encumbrances must be pre-approved by the Agency in the form of Agency Board approval. CHOICE subsidy may only be provided in conjunction with a CHOICE Construction Loan. **End Loans for Homebuyers:** For all projects, the Agency makes favorable end loan financing available to eligible buyers of CHOICE financed units. The Agency's maximum 100% Financing Program amount per project will be 50% of all units limited to 25 units, subject to funding availability. Note that the Agency requires 51% of the project units to be under contract of sale to separate purchasers prior to purchase of any 100% Financing Program mortgage loan by the Agency from the originating lender. This program does not require a downpayment or private mortgage insurance and may finance certain closing costs. Borrowers are required to have sufficient liquid assets to pay escrows at time of application (approximately $800). The interest rate for each of these 100% Financing Program loans will be based on the interest rate available at the time of homebuyer application. The Agency shall originate the 100% Financing Program loans. Other types of Agency end loan mortgages are available to EMU homebuyers and may be originated by participating private lenders. No CHOICE financing may be used to develop or support projects designed as lease-purchase projects.
Financing Fees	The Agency shall charge a nonrefundable application fee of $ 3,000 for for-profit developers and $ 1,500 for nonprofit developers. The Participating Lender is permitted to charge for usual and reasonable costs involved in processing the application. All fees will be borne by the applicant. Fees shall not exceed those charged privately for comparable loans. Fees may include inspection and plan review fees, credit reports, appraisal, flood certification, environmental tests, attorney fees, survey, and other reasonable third party costs. A usual and reasonable application fee may be charged in addition to the reimbursement of third party expenses.

	For a commitment fee, the Participating Lender may charge no more than 50 basis points on the full Construction Loan amount, payable at commitment. The Agency may charge no more than 50 basis points on the full Construction Loan amount, payable at commitment. Any Agency-approved one-time extension of the construction loan term will be subject to a fee equal to ¼ point calculated on the outstanding principal balance of the Agency's construction loan amount, plus any available loan balance. No fees or points may be charged by the Participating Lender or by the Agency to the borrower for the CHOICE Subsidy Funding.
Eligible Uses of the CHOICE Construction Loan and Subsidy Funding	Eligible uses of the CHOICE Construction Loan and any CHOICE Subsidy Funding shall be released on a pari passu basis with the Participating Lender's and any other Agency construction loan proceeds for any development budget items approved by the Participating Lender/Agency. At all times and in a timely manner, the CHOICE applicant must bring to the Agency's and the Participating Lender's attention – for the Agency's and the Participating Lender's review and approval - any other sources of funding available to the project and any side agreements, contracts or contractual understandings of any kind that the applicant has entered into or intends to enter into with any other party or parties regarding the project. Ineligible uses of the CHOICE Construction Loan and CHOICE Subsidy Funding include, but are not limited to, the following: ■ Payment of developer's administrative costs/overhead. ■ Payment of project consultant fee (this is paid from the developer fee/profit at project completion) ■ Payment of interest/fees not in the approved development budget ■ Pre-construction deposits on modular units or on any other construction materials, unless approved by the Participating Lender and the Agency. ■ Payment for costs incurred by the borrower for materials stored on or off site ■ Payments for buyer counseling services, community development activities and employment training and tools Ineligible uses of CHOICE Subsidy Funding also include, but are not limited to, the following: ■ Draws on subsidy funding prior to construction loan closing ■ Any costs that are not paid pari passu with construction loan proceeds ■ Reimbursement of interest or lost opportunity costs on developer's equity ■ Charges against unused subsidy after completion of the project cost audit.
CHOICE Subsidy Funding Retainage	The Agency shall make no more than 85% of the CHOICE Subsidy Funding available for Participating Lender/Agency-approved development costs. The remaining 15% of the subsidy shall serve as a project retainage to be made available by the Agency directly to the borrower according to the following two-step schedule: First: (a) 5% after all of the units are sold and the Agency receives and approves all required recorded documents for applicable Low-, Moderate- and Emerging Market units, certificates of occupancy, closing statements, Energy Star certificates and other documentation as applicable. Second: (b) 10% when the final cost certification is received and approved by the Agency. The Agency may revise the amount of the project retainage to be released to the borrower if there are any warranted issues identified during review of the cost certification. The CHOICE subsidy funding for EMU units shall be reduced by the Agency if the market-priced units are sold for higher prices than are approved by the Participating Lender/Agency. The reduced amount shall be equal to the amount of the increased portion of the sales price for each applicable unit. The foregoing notwithstanding, market price increases cannot be made without the Agency's pre-approval.
Disbursement of CHOICE Financing/Funding	The Agency portion of the CHOICE Construction Loan and the CHOICE Subsidy Funding will remain with the Agency until requisitioned by the Participating Lender for disbursement in accordance with the

	requisition procedure outlined in the Intercreditor Agreement. Progress payments to contractors will be made for work in place which is inspected and approved by the Participating Lender or its designee and the Agency's Technical Inspector. The Participating Lender and the Agency's Technical Inspector will carefully monitor that the general contractor, all sub-contractors and any other relevant entities that are receiving any funds owed to them from prior draws, and lien waivers for all applicable subcontractors are required as part of each draw. All draws must be covered under an updated title rundown, showing no current liens or encumbrances. Draw requests will be submitted on an AIA G-702 and G-703 form that provides line item detail and be approved by the owners designee as well as conditional and undonditional lien waivers from subcontractors and material suppliers. Construction funds will be based on a percentage of completion for a particular line item. The Agency reserves the right to randomly audit line item costs during construction to assure that the costs incurred are verifiable and that there is evidence that loan and subsidy proceeds have been correctly paid for requisitioned costs. For construction draws, a construction loan retainage of 10% must be held against each draw. The Participating Lender and Agency may reduce the retainage during construction to 5% upon 60% completion of midrise projects that are more than six units. Remaining retainage will be released upon phase completion and the issuance of certificates of occupancy, except that the Participating Lender and Agency may retain funds to assure completion of punch list items.
Eligible Applicants	Eligible applicants are legally recognized for-profit developers and non-profit developers with demonstrated housing development capacity. Joint ventures involving legally recognized for-profit and nonprofit unrelated entities are also eligible applicants, but at least one of the major entities in the joint venture must demonstrate housing development experience/capacity. Demonstrated housing development capacity means actual development experience in projects of similar nature, size and financing complexities as the applicant's proposed project. CHOICE Program Guidelines applicable to nonprofit developers may be applicable to joint ventures if the nonprofit entity is to receive at least 20% of the developer fee/profit and provides a meaningful contribution to the project and can be expected to attain greater development capacity through the experience. The entity serving as the borrower for the CHOICE financing must be formed for the sole purpose of owning and operating the project and shall own no other assets unrelated to the project. <u>Milestone Requirements</u>: For-profit developers or nonprofit developers with prior projects awarded Agency for-sale construction financing may apply for CHOICE 2014 financing provided these projects have met the following milestone requirements: - if the financing closed more than 36 months ago, projects must be 100% complete and all units sold, with project cost audits and recorded documents that have been received by and are acceptable to Agency; - if the financing closed within the past 36 months, projects must be 80% complete and proceeding on schedule, with at least 100% of the completed units under contract of sale to purchasers with mortgage commitments (or for mid-rise multi-unit construction 80% construction completion, a certificate of occupancy for the building shell, and a verification from the participating lender that construction is proceeding on schedule), and a independent professional absorption schedule from the Participating Lender and Agency's Technical Inspector projecting that the project will be 100% under contract of sale to purchasers with mortgages by the time that construction is completed or within 3 months of project completion for mid-rise or other single CO type multi-unit construction; - if the financing closed within the past 24 months, projects must be 60% complete and proceeding on schedule, with at least 100% of the completed units under contract of sale to purchasers with mortgage commitments (or for mid-rise multi-unit construction 60% of individual units construction completion, and a certificate of occupancy for the building shell, and a verification from the Participating Lender and Agency's Technical Inspector that construction is proceeding on schedule), and a independent professional absorption schedule from the Participating Lender and Agency's Technical Inspector projecting that the project will be 100% under contract of sale to purchasers with mortgages by the time that construction is completed or within 3 months of project completion for mid-rise or other single CO

	type multi-unit construction; - if the financing closed in within the past 12 months, projects must be proceeding on construction schedule and the marketing plan must be in place, and a independent professional absorption schedule projecting that the project will be 100% under contract of sale to purchasers with mortgages by the time that construction is scheduled to be completed or within 3 months of project completion; - if the financing was committed but not yet closed, projects must have met conditions outlined per Agency Board approval; - no more than one project sponsored by the same principals may be submitted for approval for CHOICE 2014funding, no more than two projects in total may be committed to the same principals, including principals affiliated with a joint venture or other applicants, if such principals have a financing commitment from 2011, 2012 or 2013 that has not yet closed, principals may have no more than a total of two incomplete projects from any CHOICE or prior funding round at any given time. Prior to submission, applicants must receive approval for an application waiver from the Agency's Executive Director if they have more than two active projects.
Eligible Property Locations and Eligible Unit Types	All projects (including the conversion of nonresidential properties) must be located in an Emerging Market municipality which shall include municipalities that are current Urban Aid municipalities or that have been an Urban Target Area municipality under the 2000 census designations or the 2010 census if such designations are revised during the time that the CHOICE 2014 program is offered, and must be located in a Smart Growth area as designated by the Office of Smart Growth. The foregoing notwithstanding, Emerging Market projects must be located in areas where new or gut rehabilitated homeownership units cannot be developed and sold under current local market conditions without a subsidy. Affordable units will be eligible for less than or equal to 20% of the project if proof of need is demonstrated by evidence of municipal support. Affordable units are not eligible for subsidy. Affordable units must be intermixed with market units. Projects must establish a core presence of homeownership or must fill critical gaps necessary to stabilize an identifiable neighborhood or area. All projects must demonstrate significant neighborhood impact, i.e. infill units in developed areas, with approved redevelopment plans. Projects that in the Agency's determination and discretion will have limited discernible impact on their location in the neighborhood or because they are too defuse are not eligible. Eligible types of units that may be developed include newly constructed and/or gut rehabilitated one-family dwellings that are developed as fee simple units, condominium units or planned unit developments (PUDs). One bedroom units are limited to 10% of project total. ***A waiver may be requested if a viable market for one bedroom units can be demonstrated. (i.e. sales in a recent project within the area)*** No studio units will be accepted. Eligible types of units that may be developed also include newly constructed and/or gut rehabilitated two-family dwellings (where one unit is owner-occupied and the other unit is rental) in Agency-designated Urban Target Areas. Scattered sites projects will be considered where properties involved in the project are contained within an approximate ⅛ mile radius of the most central property. Projects must establish a core presence of homeownership or must fill critical gaps necessary to stabilize occupancy of an identifiable neighborhood or area. Projects that in the Agency's determination and discretion will have limited discernible impact on their location in the neighborhood or because they are too defuse are not eligible. Agency staff shall also gauge the impact in a site visit. Project applications must demonstrate the neighborhood impact of the project through the submission of any governmentally-approved neighborhood plans for the area and/or any documentation required by the Agency.

	Projects must have a reasonable expectation of being eligible for end loan financing for unit purchasers. Reasonable expectation may be FHA or other high LTV mortgage insurer eligibility or a declaration of interest in providing end loans from a credible lender. Partially completed projects and projects with age-restricted units are not eligible for CHOICE 2014 financing. Commercial/retail/residential mixed-use properties are eligible at street level, if the host municipality requires such uses under its master-plan or other pre-existing ordinances, resolutions or codes.
Eligible Project Size	Projects shall contain at least ten (10) homeownership units. The Agency shall not waive this requirement unless a Participating Lender agrees to underwrite the project and charge no more than the fees permitted to be charged by lenders under the CHOICE Program. Each CHOICE application must be for a project that stands on its own when completed, has its own municipally-approved site plan and is not dependent in any legal and/or financial way upon the construction or rehabilitation of one or more additional forthcoming phases.
Emerging Market Developments, Funding Provided, Maximum Subsidy Loan Amounts per Unit, Maximum Total Subsidy Amount per Project, Project Requirements, Deed Restriction	**Emerging Market Projects:** These projects feature the development of homeownership units in Agency-identified markets that are not currently considered viable for construction of new or gut rehabilitated housing because the cost to build a unit is higher than the market price for which the unit can be sold. Emerging Market Projects are eligible for: ■ a CHOICE Construction Loan ■ CHOICE Subsidy Funding to provide "gap" funding needed per the Participating Lender/Agency-approved development budget. The total subsidy amount shall be no more than $50,000 per unit for Emerging Market Unit. Note that the rental unit in any two-family homeownership dwelling is ineligible for subsidy. ■ The total subsidy amount for any one project may not exceed $1,500,000. Emerging Market Project requirements are as follows: ■ Projects must document that the costs to develop all the units are higher than the prices at which the units can be sold. Documentation, at a minimum, shall consist of Participating Lender/Agency-approved appraisals/market analyses and real estate sales comparables and Participating Lender/Agency-approved development budgets. (Refer to Section XI of the application.) To guard against over subsidizing a project, proposed EMU sales prices that are less than 95% of comparable market sales prices shown in the independent appraisal must be justified. ■ Units will be sold at market prices approved by the Agency's Board and may not exceed the applicable maximum sales price limits of the 100% Financing Program. The Agency may approve subsequent increases in the EMU sales prices per terms and conditions approved by the Board as long as these new prices still do not exceed the maximum sales price limits of the 100% Financing Program. Buyers of these units may have unlimited household incomes, and the Agency will not impose affordability controls on these units. ■ Due to the subsidies involved, the sale of each EMU shall be subject to a Shared Appreciation for 15 years. Under this restriction, at the time of the buyer's sale or cash-out refinance of the unit, and in an amount that shall never exceed that of the subsidy attributed to the unit, the buyer shall pay the Agency 100% of the net appreciation should the unit be sold/refinanced during the first 2 years; 50% should the unit be sold/refinanced in the 3rd year; or 25% should the unit be sold/refinanced each year thereafter during the 4th year through the 15th year except that if, after the 5th year, the unit is sold to a household who will occupy the home as a primary residence, no shared appreciation shall be required. This will be subject to a covenant to the HMFA that the shared appreciation will be reinstated if the buyer fails to occupy the unit within 60 days and continuously for at least one year. This lien shall not be subordinated unless there is an appraisal

	disclosing that there is adequate equity in the unit to repay the Shared Appreciation lien. ■ Rental units in any two-family homes may be leased by the homebuyer to households of any income unless the units are subject to affordability controls imposed by another funder.
Municipal Resolution	Applicants must provide evidence acceptable to the Agency documenting municipal support for the project and the CHOICE application. The resolution must adequately identify the site, total number of units and number of affordable units (if any) and EMU units. At the time of application, developer must present at a minimum written confirmation that the project is viewed favorably and that a resolution memorializing its approval of the project, its location and the EMU/affordable unit mix, will be introduced for approval by the governing body of the municipality. A final resolution must be approved prior to loan closing.
Site Control	Site control by the applicant or borrower must be documented for project properties at the time of application and must show evidence that full title to all property involved in the project can be obtained by the CHOICE closing deadline. Where the property is being obtained in conjunction with a redevelopment agreement, a copy of an executed disposition and development agreement with a public agency with powers of eminent domain must be provided along with evidence of site control as indicated below for all properties. Site control must be evidenced by: fee simple title; option to purchase, including evidence that options are renewable subject to similar terms until the date of loan closing, or an executed land sales contract or other enforceable agreement for acquisition of the property. If any of the property (or properties) is to be transferred by the municipality to the applicant, a certified true copy of the authorizing ordinance/resolution for the transfer of the property must be submitted if the authorization has not already been included in the redevelopment agreement.
Site Plan/Regulatory Approvals	Evidence of preliminary site plan approval and all related reports is required at the time of application. The final site plan and final municipal approvals or planning board resolution must be submitted together with all other approvals including evidence of condominium document submittal from Department of Community Affairs, within 30 days of Agency's financing commitment. This will be a condition of the commitment. In the event this is not received, the commitment may be considered null and void. If preliminary and/or final site plan approval is not required by a municipality prior to the start of construction, a letter from the municipality explaining this must be provided and approved by the Participating Lender/Agency. It is the developer's responsibility to demonstrate that the project complies with all applicable local land use and zoning requirements. A list of all prior government and Agency approvals from the developers professional must be provided.
Site Utilities	The applicant must provide evidence that the site will be serviced by all required utilities, including but not limited to the sewer, electric, gas and water as may be provided for in the plans. Evidence of authorization to connect at the planned capacity levels shall be provided along with documentation of fees.
Property Environmental Review	At time of CHOICE application, a Phase I environmental assessment using ASTM standards regarding the project property is required, unless agreed to otherwise by the Participating Lender/Agency. The report must be provided by a firm acceptable to the Participating Lender. Additional assessments, such as a Phase II site investigation or NJ Department of Environmental Protection (DEP) environmental remediation measures, may also be warranted, particularly if recommended in the Phase I report. If remediation is necessary, the remediation plan must be cost estimated in detail and included in the total development cost budget. The Agency may request updated assessments at its discretion. Substantial rehabilitation projects not required by the Participating Lender/Agency to provide identification of a Phase I must, at a minimum, provide an environmental assessment report(s) prepared by a third party professional(s) acceptable to the Agency/Participating Lender that addresses mold, pest inspection and underground storage tanks. Projects involving gut rehabilitations must, at a minimum, require that a third-party professional(s) acceptable to the Agency/Participating Lender confirm any

	existence and needed removal or remediation of lead based paint, asbestos or underground storage tanks in the project. If a Phase I is required for a clustered scattered site project, the 1 mile radius contamination report may be from a central address within the project rather than from multiple addresses. Applicant must certify that all necessary environmental approvals have been obtained and submit evidence of each approval.
Structural Integrity/Soils Test	At time of application submission, projects that include the substantial rehabilitation of structures must supply a report from a structural engineer or the architect of record for the project acceptable to the Agency and Participating Lender, documenting the integrity of the structure. Post Agency commitment, a structural engineer and Agency's Technical Inspector will revisit the site. A geotechnical soils load-bearing capacity test will be required at time of submission for all projects involving new construction units. The test shall cover both the proposed project sites as well as the areas where utility lines and infrastructure for the project will be provided. If remediation is necessary, the remediation plan must be cost estimated in detail and included in the total development cost budget.
Unit Minimum Square Footage Requirements	**Unit Minimums**: The minimum, useable, interior square footage requirements per unit are as follows: **MINIMUM INTERIOR UNIT SPACE REQUIREMENTS*** Unit Size — Minimum Square Footage 1-Bedroom Unit — 650 2-Bedroom Unit — 850 3-Bedroom Unit — 1,150 4-Bedroom Unit — 1,250 Basements, garages, crawl spaces, attics or other unfinished space may not be used to calculate the minimum interior unit square footage requirement. **Bedroom Minimums**: For each unit (including rental units), one of the bedrooms must be at least 150 sq feet of clear, useable floor space, not including closets. Each additional bedroom must be at least 100 square feet. Units to be gut rehabilitated that cannot meet the above-listed requirements may seek an exception to them with backup documentation. This might include a municipal authority certifying that the municipality requires the use of the existing unit foundation footprint and/or shell; municipal set-back requirements that prevent expansion; historic requirements preventing unit expansion; and/or a certification from an architect or engineer detailing that such expansion would affect the financial feasibility of the project (or a certification from the contractor, but only in the event the municipality confirms in writing that architect and/or engineer plans are not required for project permits). All work must conform to the New Jersey Rehabilitation Subcode. Each bedroom must contain at least one closet.
Energy Star	Units must be Energy Star certified.
Developer and Development Team Capacity	Developer's entity must have experience with both land development and construction of similar size and complexity. In addition to reviewing the developer's entity experience, the Participating Lender and the Agency will review the **entire** development team and/or other entities that have a role in project implementation, including but not limited to the builder, general contractor, project manager, modular company, marketing firm, counseling agency and consultant. The qualifications of all key participants will be examined.

	A developer wanting to act as the general contractor for the project must use or form a separate legal entity to serve as the general contractor; the contractor shall enter into a construction contract(s) with the developer and provide any other documentation the Agency requires. Anyone acting as the general contractor must provide evidence that they are able to obtain evidence of a 100% Payment & Performance Bond equal to the construction cost with a bonding company rated with an A.M. Best Rating of B+ or better. The developer must designate a person to be the liaison between the developer and the general contractor in order to maintain a single point of contact on a regular basis for the general contractor as well as the construction inspectors for the Participating Lender and the Agency. The Agency will review the ability of the developer to obtain credit based upon previous experience/projects completed. In determining capacity, the Agency will take into consideration past performance in Agency and NJ Department of Community Affairs (DCA) programs including, but not limited to, Balanced Housing, Agency Single & Multifamily programs, and state, county or municipal funded HOME programs. Failure to perform by any of the key participants in past contracts with the Agency or the DCA, including failure to pay fees to the Agency or the Agency's Housing Affordability Services or failure to repay loans from the Agency or the Department, may be grounds for disqualifying an application. The Agency will also consider the developer's past performance in federal, county and local government contracting. The Agency will also consider current or past loan or contract defaults and serious events of default attributable to the applicant or its principals or to any members of an applicant's development team to be material to the Agency's determination of capacity to effectively perform under the loan and construction agreements and of the applicant's overall creditworthiness. The Agency will require personal guarantees from the developer, in the amount of the construction loans. The Agency will also require a not to exceed contract price, between the developer and the general contractor in a form acceptable to the Agency, signed by both parties.
Developer Fee/Profit	The developer fee/profit will be capped for all subsidized (i.e. Low-, Moderate- and Emerging Market) units on a per unit basis contingent upon the number of bedrooms: MAXIMUM PER-SUBSIDIZED-UNIT DEVELOPER FEE/PROFIT SCHEDULE UNIT SIZE / HOME OWNERSHIP / RENTAL 1 Bedroom / $16,000 / $ 8,000 2 Bedrooms / $18,000 / $10,600 3 Bedrooms / $20,000 / $13,400 4 + Bedrooms / $22,000 / $15,200 The minimum developer fee/profit will be the lesser of 5% of the total development cost (excluding the developer fee/profit) or the appropriate per unit maximum fees as outlined in the above schedule. Project consultant fees are to be paid out of the developer fee/profit, which is paid per a schedule approved by theParticipating Lender/Agency. The developer fee/profit is not a guaranteed amount. This can be affected by a change in the budget or the price of the units.
Contractor Fee	The contractor's fee shall be based on a percentage of the construction cost as such: MAXIMUM CONTRACTOR FEE SCHEDULE TOTAL CONSTRUCTION COST / MAXIMUM FEE Under $2 million / 10% Under $3 million / 9.5%

	Under \$4 million 9.0% Under \$5 million 8.5% Under \$6 million 8.2% Under \$7 million 7.9% Under \$8 million 7.6% Under \$9 million 7.3% Under \$10 million 7.0% Over \$10 million 6.7% *If the total construction amount falls between two bracketed amounts, the maximum fee percentage shall be prorated. The maximum fee percentage is absolute and not graduated or inclusive of aggregated maximum fee percentages for dollar amounts expended. Contractor's fee (and architect's fee) for projects utilizing modular construction is expected to be based on actual scope of work to be performed, not on construction cost. Justification acceptable to the Participating Lender and the Agency must be given if these costs exceed fees customary for modular construction projects.*
Maximum Developer/Contractor Fee, for Related Parties	If the developer and the contractor are related parties, the maximum combined developer and contractor fees shall not exceed the lesser of: the total amounts permitted by the above limitations OR 20% of the total development budget (excluding the developer fee/profit). If any part of the development entity is providing additional services to the project, compensation for these costs must be paid from the developer fee/profit.
Hard and Soft Contingency Budgets	A construction contingency is required as part of the development budget for at least 5% of the total hard construction costs for new construction units and at least 10% of the total hard construction costs for rehabilitation units. A soft cost contingency is required as part of the development budget in the amount of 2% of the total soft costs (including professional fees and carrying costs), unless special circumstance acceptable to the Agency are shown to exist.
Budget Submissions, Maximum per Unit Total Development Cost and Maximum per Unit Residential Structures Sq. Ft. Costs	The application should include complete financing and budget information (refer to Section X of the CHOICE 2014 Application). The application must include an engineer's cost estimate for site work per approved site plans and architect or engineer's cost estimate of the total construction cost by square footage or per unit cost. Before closing on the CHOICE loans, all line items must be evidenced by contracts or binding proposals. The Development Budget's "Total Development Cost" shall not exceed \$250,000 per unit (not including hard/soft cost contingency) unless there are extenuating circumstances. The Development Budget includes costs for "Building and Property Acquisition", "Construction", "Contractor Fee", "Hard Cost Contingency", "Professional Services", "Carrying and Financing Costs", "Soft Costs and Contingency" and the "Developer's Fee". Additionally, the budgeted per square foot cost for "Residential Structures" should not exceed \$ 125 per sq. ft., (\$ 140 per sq. ft. if on-site and off-site infrastructure are included) for construction projects. **Soft costs directly related to the project will be permitted as a budgeted line item provided they are acceptable to the Agency and were incurred within one year of the application submission date.**
Developer Equity	All developers must contribute a minimum of 10% equity to the project, and equity shall be the first money spent on or credited to the project before any release of construction loan proceeds and subsidy funding. The total development cost for each project or each specified phase of a project, less the developer fee/profit, shall be used to determine the minimum equity requirement. Acceptable equity sources include: ■ Approved pre-development costs shown in the development budget which are documented as already paid for by the applicant and that will not be reimbursed from any CHOICE

	financing/funding. Eligible pre-development costs for purposes of calculating the equity include: developer funded site acquisition (Participating Lender/Agency-approved as-is value of property), survey, environmental studies, architect, Participating Lender/Agency required appraisal, legal and engineering fees. Proof of payment is required at time of application for all claimed equity. Other equity-qualifying costs will be considered on a project basis. All third party fees must be reasonable for the scope and cost of the project. ■ For-profit developers may use various sources for developer's equity, including borrowed funds, but may not charge interest to the development budget related to their equity and may not secure any lien on the project to secure equity or borrowing to cover equity. ■ Other approved non-CHOICE sources of funding that are allowed to be used as equity, do not require developer repayment from the project budget, are confirmed as available by the Participating Lender, and to the Agency's satisfaction, and are used to pay towards specific line items in the development budget. This will first be used to pay preconstruction costs, i.e. professional fees, licensing, government approval fees, etc. ■ Cash to pay towards specific line items in the development budget. Evidence of availability of cash must be confirmed as available by the Participating Lender to the Agency's satisfaction. For nonprofit developers (and joint ventures that include a non-profit as described under Eligible Applicant above), the approved developer fee/profit may be credited as the source of required equity, with any needed balance to be credited from the subsidy funding.
Market Study	An Agency ordered market study is required for all multi-story buildings to ensure an adequate budget is created for the project. This must be paid for by the Developer prior to or at time of application.
Pre-closing Construction	Project construction is prohibited from commencing prior to the closing of CHOICE financing/funding. Any work commenced or completed without Agency and Participating Lender pre-approval will not be funded and may result in a termination of the CHOICE financing commitment.
Construction Change Orders	All change orders must be pre-approved by the Participating Lender and the Agency and be consistent with the standards and procedures established by the Participating Lender and the Agency. The Participating Lender and the Agency have the authority to deny change orders and to reserve sufficient funds and/or require the developer to deliver sufficient funds to complete construction of the project.
Market Valuation and as-is Valuation Appraisals	As an Agency condition of CHOICE financing/funding, an independent market valuation appraisal and an as-is valuation appraisal, which conform to the Uniform Standards of Professional Appraisal Practice (USPAP), meets Participating Lender standards, if applicable, and addresses comparable unit sales prices and absorption rates, shall be ordered by the Agency and/or Participating Lender, and paid for by the Developer, to determine project valuation and marketability of the project units. Such appraisals must be reviewed/approved by the Agency and Participating Lender, if applicable, prior to closing. The “as-is' valuation should not take into consideration the effect that potential CHOICE or other project subsidies may have on the use of the property. If the analysis is more than 6 months old from the planned financing closing date, the Agency may request an update of this supply and demand analysis for purposes of confirming viable unit sales prices. For project property owned for 5 years or less, the Agency will recognize the lesser of the appraised value or the purchase price of the realty and any buildings and improvements thereon involving the most recent arm's length transaction as provided by a “Delineation of Title” history (completed by the appraiser or a title agency) identifying each party associated with the conveyance. The total purchase price may include documented carrying costs, expenditures to obtain zoning, environmental or other governmental approvals necessary or useful for the development of the project. For project property owned for more than 5 years, the appraised value alone may be recognized. **NOTE: Arms Length Transaction is defined as: A transaction negotiated by unrelated parties, each acting in their own self interest in arriving at a basis for a fair market value determination.**
Model Units	The construction of a limited number of model units will be a permitted use of the CHOICE Construction Loan. The Participating Lender and the Agency must determine the number of presales and model units

	and that the marketing of the project will be enhanced by the construction of models and warrant that sufficient security is in place to protect the investment. The development of speculative units will not be permitted as part of this unless the developer can demonstrate to the Participating Lender's and the Agency's satisfaction the marketability of the units.
Pre-Sales	The Participating Lender and the Agency may require an acceptable level of pre-sales for each project or phase in accordance with their normal standards. The Participating Lender must consult with the Agency to establish a measurable level of pre-sales and ensure that the established pre-sale requirement is met prior to requesting Agency construction loan funds or CHOICE Subsidy funds. The Participating Lender and Agency's analysis may be based on a market study, absorption analysis or other sales and neighborhood data acceptable to the Participating Lender.
Unit Sales Proceeds	Unless determined otherwise by the Participating Lender/Agency, all unit sales proceeds shall be used for the following purposes in this order: • to pay off any unpaid portion of the CHOICE construction loans, • to pay off any unpaid portion of other construction financing provided by non-CHOICE sources, as required, • to cover any other non-developer fee/profit costs required by the Participating Lender/Agency, • to pay the developer fee/profit These conditions and any other conditions for the use of sales proceeds should be set forth in the Participating Lender's commitment and approved by the Agency.
Unit Sale Lien Waivers	In order to receive a fully-executed lien release from the Agency for its applicable CHOICE first and second mortgages on a completed unit that is to be sold, the borrower must provide to the Agency for its review and approval in advance of the unit closing: (1) a copy of the fully-executed contract of sale and all addendums, (2) a copy of the fully-executed Certificate of Occupancy, (3) a copy of the Energy Star completion certificate, (4) confirmation that HAS is preparing closing deed restriction documents for the affordable unit, if applicable, (5) a draft copy of the unexecuted documents prepared for shared equity restrictions for an EMU, if applicable, and (6) a statement from the lender for the release amount. Upon sale of the unit, the borrower must provide to the Agency for its review and approval after closing: (1) a copy of the executed deed restriction documents for an affordable unit or a copy of the executed shared equity documents for an EMU (as applicable), (2) evidence that payment was made directly to the Participating Lender for the release amount of the home, (3) a copy of the executed HUD-1 Settlement Statement, and (4) a Partial Release of Mortgage prepared by the borrower's attorney and sent to the Agency for execution by the Director or Assistant Director of Single Family Programs.
Modular Units	Payment for the delivery of modular units will be in accordance with the Agency and Participating Lender's standard disbursement policy. If a disbursement of funds is made when the modular unit is delivered, the Participating Lender's and the Agency's representatives must be on site to approve the unit and confirm its compliance with the plans and specifications. Appropriate advance notice to the Agency of a scheduled delivery is required. The Agency may require factory site visits by Single Family's Technical Inspector during manufacturing of the units. Deposits, or downpayments, on modular units must be paid by the developer and will be reimbursed from the construction loan once the unit is permanently attached to the foundation and the Participating Lender's and the Agency's inspections are completed.
Title Insurance	Title Insurance naming the Agency and the Participating Lender as insured parties on all mortgaged property is required from a N.J. authorized title insurance company acceptable to the Agency and Participating Lender, insuring that the lien of the mortgage is a first mortgage lien; free and clear of all encumbrances (except usual encumbrances such as utility easements). The Agency or Participating Lender will specify the form of the title insurance at the time of loan commitment. The Agency requires title policy coverage for the full amounts of the CHOICE Construction Loan and the CHOICE Subsidy Funding and any other Agency financing. If the loan is revolving or being paid down during construction, the amount of coverage must be in at least the amount of the highest anticipated outstanding

	principal loan balance. CHOICE subsidy coverage must also be at least in the amount of the highest anticipated outstanding subsidy balance, recognizing any scheduled reduction of the subsidy caused by the release of the corresponding mortgage upon sale of units to homeowners. The title policy must permit amendment to increase coverage if the outstanding balances exceed projections. The Agency or Participating Lender must verify by title run-down that the mortgage is in a first lien position, free and clear of all liens and encumbrances, prior to each draw. Conditional and unconditional Lien waivers in the form provided by the Agency (see Attachment #4) should be obtained from all contractors and sub-contractors for each draw.
Insurance	The Participating Lender and the Agency must be listed as the First Loss Payee or equivalent status on all insurance policies which cover the project site, equipment, materials and construction completion.
Survey	All project developers must submit a completed ALTA SCMA Urban Class Survey at time of application. Survey must include all easements and/or right-of-way. The Surveyor must sign and seal the survey. The survey must be certified to the owner, Title Company, Participating Lender and the Agency.
Project Completion Guarantee	The Agency or Participating Lenders will be required to ensure that each project has the appropriate safeguards to ensure project completion. Participating Lenders and/or the Agency's discretion may require recourse, performance bond, letter of credit, additional equity, or other forms of guaranty as may be reasonable. Personal and/or corporate recourse may be required, at the Agency or Participating Lender's sole discretion, from for-profit developers, limited equity corporations and joint development teams. Non-profit developers will not be subject to personal recourse. Any guarantees required shall also apply to the benefit of the Agency (see the Intercreditor Agreement for further explanation).
Project Cost Certification and Interim Line Item Audit	At project completion, the Developer shall provide a final Project Cost Certification of the total development costs prepared by a Certified Public Accountant in a format acceptable to the Agency. A copy of such will be delivered to the Agency within three months of the project's completion. If the cost audit is not submitted within three months, the developer must provide a letter from a Certified Public Accountant explaining the reason for the delay and when the audit will be submitted to the Agency. If this explanation is found acceptable, the Agency shall grant up to no more than three additional months for the audit's submission. If the Agency does not receive the audit within this approved extended time period, any remaining undisbursed CHOICE subsidy shall not be released and shall remain permanently with the Agency. Any expenditures in the submitted cost audit that are in excess of those documented and/or approved by the Agency will be considered ineligible. Funds remaining with the Participating Lender and the Agency, as well as any sales proceeds in excess of the construction loan balance, will be used to offset ineligible expenses. In advance of the Project Cost Certification, the Borrower must affirm in writing that all project funding is complete and that no additional draws will be submitted, except for any withheld subsidy retainage contingent on the completion of the Project Cost Certification. At any time prior to project completion the Agency may randomly audit or cause to be audited any line item or items for which payment has been requested. Such audit may include review of costs submitted including all backup for all materials and labor and interviews and certifications with and from subcontractors.
Project Selection Criteria and Agency Rights and Reservations	CHOICE construction loan and subsidy funding commitments will be made by the HMFA Board on a first come first served basis. Only project applications that are complete and in conformity with these Guidelines will be recommended to the HMFA Board for a funding commitment. Funding availability will terminate at the earlier of when the funds are all committed or when the Agency declares the 2014 funding round ended. The Agency staff will make best efforts to review the application and issue a cure letter within 30

	calendar days. All required items in the cure letter must be sent in as a single submission, not piecemeal. The developer will have 45 calendar days, from the date of the cure letter to submit the items. (If responses to the cure letter raise other questions, the developer will be given an additional 10 day s to satisfy the cure.) If all items are not submitted within the 45 days, the application will be returned to the developer, any developer wishing to continue with the application, must resubmit a completed application with the appropriate application fee. The Agency reserves the right, at its sole discretion, to determine eligible amounts and use of the CHOICE Construction Loan, the CHOICE Subsidy Funding and any Agency end loan financing. In the event an applicant is awarded less than the requested financing/funding amounts, it may be necessary for the applicant to modify the project plans and budget accordingly. In addition, the Agency reserves the right to reject any and all submissions.